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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92739; File No. SR-CBOE-2021-048]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Fees Schedule Regarding Executions in the Cboe Compression Service

August 24, 2021

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 12, 2021, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend its fees schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule in connection with executions of S&P 500 Index options (“SPX”) in the Cboe Compression Service (“CCS”) and to make a clarifying change regarding Position Compression Cross (“PCC”) orders, effective August 12, 2021.

Specifically, the Exchange recently adopted the CCS for SPX (including SPX Weeklys (“SPXW”)),³ which it intends to launch on August 12, 2021. CCS is an additional, voluntary compression tool that Trading Permit Holders (“TPHs”) can use to close SPX positions to reduce regulatory capital attributable to their SPX holdings. To participate, a TPH must submit a “position list” prior to an Exchange-specified time after the close of trading on the specified day that details all of the open SPX positions it would like to close out. If all TPHs that submit position lists on that day agree to the

³ See Securities Exchange Release No. 92354 (July 8, 2021), 86 FR 37197 (July 14, 2021) (SR-CBOE-2021-020) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Rule 6.10 To Introduce a Voluntary Multilateral Compression Service for SPX Options).

compression proposal provided by the Exchange, the Exchange then runs an automated process to match offsetting positions in an anonymized manner and then effects the transactions at specified compression prices⁴ off the exchange.⁵

The Exchange now proposes to amend its Fees Schedule in connection with the planned implementation of CCS for SPX/SPXW. Particularly, the Exchange proposes to waive all transaction fees and applicable surcharges incurred as a result of CCS transactions in SPX/SPXW.

First, the proposed rule change amends footnote 41 so that transaction fees and applicable surcharges are waived for CCS transactions, as they currently are for Position Compression Cross (“PCC”) transactions, which TPHs may also use to compress their positions in SPX/SPXW. Specifically, the proposed rule change amends footnote 41 to provide that the Exchange shall waive transaction fees, including the Index License Surcharge and SPX/SPXW Execution Surcharge, for (i) PCC transactions executed electronically or in open outcry, as applicable, and (ii) CCS transactions, and that PCC and CCS transactions will not count towards any volume thresholds. The Exchange notes that Footnote 41 is currently appended to: (1) SPX/SPXW and SPESG Liquidity Provider Sliding Scale; (2) Clearing Trading Permit Holder Proprietary Products Sliding Scale; (3) Select Customer Options Reduction (“SCORE”) Program; (4) SPX/SPXW Market-Maker

⁴ The “compression price” is generally the price of the option as close as possible to the midpoint of the NBBO at the close of the trading day or the daily marking time, subject to adjustment using generally accepted volatility and options pricing models in the event of wide markets, market volatility, or other unusual circumstances.

⁵ The Exchange notifies the TPH participants of each TPH’s individual compression proposal, and each TPH with at least one offsetting position must notify the Exchange whether it accepts its individual proposal in order to proceed with the CCS transactions.

Tier Appointment Fees; (5) Floor Broker Trading Surcharge; (6) Floor Broker ADV Discount; (7) Floor Brokerage Fees Discount Scale; and (8) Frequent Trader Program;⁶ therefore, CCS transactions, like PCC transactions, will not count towards any volume thresholds for these programs. The proposed rule change also appends footnote 41 to the line item for SPX (incl SPXW) and SPESG that corresponds to Joint Back-Office (“JBO”), Non-TPH Market-Maker and Professional transaction fees to make it clear that all SPX/SPXW-related transaction fees and applicable surcharges for PCC transactions and CCS transactions, as proposed, are waived. Next, the proposed rule change amends footnote 17 of the Fees Schedule to explicitly exclude CCS transactions from the FLEX Surcharge Fee.⁷ Finally, the proposed rule change amends footnote 21 of the Fees Schedule to explicitly exclude PCC orders and CCS transactions from the SPX, SPXW and SPESG Execution Surcharge. The Exchange notes that the SPX, SPXW and SPESG Surcharge does not currently apply to PCC transactions, as provided in footnote 41; the proposed rule change merely adds PCC to footnote 21 to provide additional clarity in the Fees Schedule.

The Exchange wishes to waive transaction fees and surcharges for CCS transactions to encourage TPHs to use the service. The Exchange believes compression of SPX positions using the CCS would improve market liquidity by freeing TPHs’ capital currently covering nearly worthless positions and allow them to put that capital back into the markets to facilitate execution of customer orders. As CCS transactions will not incur

⁶ The Exchange notes that footnote 41 is also appended to the Floor Broker Sliding Scale Rebate Program; however, this program is not applicable generally to orders in SPX/SPXW.

⁷ The Exchange notes that PCC for FLEX is not currently supported, therefore this surcharge is not currently applicable to PCC orders.

any fees or surcharges, the Exchange does not believe that CCS volume should be counted towards volume thresholds for the applicable incentive programs. The Exchange again notes this is in line with the manner in which PCC orders, which is another compression tool available to TPHs, are currently treated pursuant to the Fees Schedule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁸

Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁰ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b)(4).

The Exchange believes the proposed rule change to waive SPX/SPXW transaction fees, including the SPX, SPXW and SPESG Execution Surcharge, and applicable SPX/SPXW surcharges, including the FLEX Surcharge Fee, for CCS transactions is reasonable because market participants will not be subject to transaction fees or surcharges for these executions. As such, the proposed waivers are reasonably designed to incentivize TPHs to submit compression lists to the Exchange and compress positions, which the Exchange believes would improve market liquidity by freeing TPHs' capital currently covering nearly worthless positions and allow them to put that capital back into the markets to facilitate execution of customer orders. The Exchange believes the proposed rule change to not count CCS volume towards volume thresholds for any applicable incentive program is reasonable, as such transactions will not incur any fees or surcharges for such volume. The Exchange also notes that it is reasonable to exclude such volume from the volume thresholds for the SPX/SPXW Market-Maker Tier Appointment Fee and SPX/SPXW Floor Broker Trading Surcharge because, like for PCC transactions, the Exchange does not want to discourage such compression transactions. The Exchange also believes that the proposed rule change is reasonable as the Exchange already waives SPX/SPXW transaction fees and applicable surcharges for PCC orders, which is another compression tool available to TPHs, and also excludes PCC volume from the same incentive programs.

The Exchange believes that the proposed fee/surcharge waivers and exclusion from incentive program volume calculations for CCS transactions are equitable and not unfairly discriminatory because they apply uniformly to all market participants who choose to use CCS to compress their SPX/SPXW positions, in the same manner in which

fee/surcharge waivers and exclusions from incentive program volume calculations for PCC orders are applied uniformly to all market participants that submit PCC orders today.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes apply equally to all similarly situated market participants, i.e., all market participants who choose to use CCS to compress their SPX/SPXW positions. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change applies only to an Exchange proprietary product, which is traded exclusively on Cboe Options. The Exchange believes the proposed rule change will promote competition, as it may incentivize TPHs to use the CCS to compress SPX positions, which the Exchange believes would improve market liquidity by freeing TPHs' capital currently covering nearly worthless positions and allow them to put that capital back into the markets to facilitate execution of customer orders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹¹ and Rule 19b-4(f)(2)¹² thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2021-048 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-CBOE-2021-048. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2021-048 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Jill M. Peterson,

Assistant Secretary.

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¹³ 17 CFR 200.30-3(a)(12).